

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SHORELINE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010081038

ORDER DENYING MOTION TO
DISMISS

On August 31, 2010, Student filed a due process hearing request (complaint) naming Shoreline Unified School District (District) as the respondent. The sole issue alleged was “Did District deny [Student] FAPE by failing to hold an IEP and have a appropriate placement offer in place for [Student] at the beginning of the 2010-2011 school year?” On September 16, 2010, District filed a Motion to Dismiss. District contends that the complaint is “premature” and therefore outside OAH jurisdiction, because an IEP team meeting had been held on September 21, 2009, such that there was still time to hold an annual IEP at the time Student filed. As discussed below, the District’s motion is meritless.

Special education law does not provide for a summary judgment procedure. However, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....).

Here, the District fails to appreciate that Student is challenging both the timing and appropriateness of the District’s offer of placement and services. There is nothing premature about a challenge to the offer of FAPE. Moreover, although the existence of a prior IEP dated September 21, 2009 may provide a defense to Student’s procedural claim at hearing, it does not facially demonstrate a lack of jurisdiction. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: September 28, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings